

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

FC 2015-003823

05/19/2016

HONORABLE GEOFFREY FISH

CLERK OF THE COURT

A. Ashburn

Deputy

IN RE THE MARRIAGE OF  
MICHELLE MANSFIELD-NOVOA

MICHELLE MANSFIELD-NOVOA  
3420 N 47TH WAY  
PHOENIX AZ 85018

AND

RAFAEL ANGEL NOVOA

RAFAEL ANGEL NOVOA  
3420 N 47TH WAY  
PHOENIX AZ 85018

FAMILY SUPPORT SERVICES-CCC

**RULING**

The Court has received and reviewed a *Notice of Reconciliation and Stipulation to (1) Set Aside Decree of Legal Separation and (2) Approve Post-Nuptial Agreement* filed on May 17, 2016. In the Stipulated Agreement, the parties also seek to vacate the property settlement agreement and the child support order and approve the parties' Post-Nuptial Agreement found in the Notice of Reconciliation.

**CASE HISTORY**

The Court signed and filed the Consent Decree of Legal Separation on August 14, 2015. As part of the Consent Decree, the parties entered into a property settlement agreement that was incorporated by reference but was not merged with the Consent Decree. The parties were unrepresented when the Consent Decree was signed.

The Consent Decree is not flawed. The parties do not challenge the validity of the Consent Decree or the property settlement agreement. The parties do not allege any basis for setting them aside under Rule 85, Arizona Rules of Family Court Procedure.

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In the Stipulated Agreement, the parties say they have reconciled and do not wish to remain legally separated.

**STATUTORY AUTHORITY**

Based on the Stipulated Agreement, the Court may stop the child support. Logically, it seems that the Court also should be able to vacate the Consent Decree of Legal Separation and the related agreements if the parties wish to reconcile. However, this Court's jurisdiction with regard to marriage in Arizona is limited to the statutory framework that the Legislature created. *See Weaver v. Weaver*, 131 Ariz. 586, 587, 643 P.2d 499, 500 (1982).

This Court's jurisdiction in legal separation proceedings, much like in marital dissolution proceedings, is statutory. *See id.*; *see also Thomas v. Thomas*, 220 Ariz. 290, 292, ¶ 8, 205 P.3d 1137, 1139 (App. 2009).

Arizona law says that a decree of legal separation is final and non-modifiable. *See A.R.S. § 25-317.F.* Arizona's marriage statutes make no provisions for this Court to vacate a decree of legal separation. Because vacating the Consent Decree and the accompanying property settlement agreement would be tantamount to a total modification, the Court cannot vacate the Consent Decree and the accompanying property settlement agreement.

This analysis would suggest that the only remedy available to the parties is to proceed with a dissolution action and then remarry. The Court does not believe the Legislature intended that result given the strong public policy of encouraging stability in marital relationships.

**RECONCILIATION AGREEMENT**

Though the Court may not vacate the Consent Decree and the accompanying property settlement agreement, the Court may approve a reconciliation agreement, which has the effect of superseding a decree of legal separation and a property settlement agreement.

Courts have long approved of reconciliation agreements as consistent with the public policy of encouraging the resumption of marital relations. *See Hanner v. Hanner*, 95 Ariz. 191, 193, 388 P.2d 239, 241 (1964); *see also Smith v. Smith*, 71 Ariz. 315, 227 P.2d 214 (1951). "The law encourages the resumption of marital relations. Since the purpose of a reconciliation agreement is to restore marital relations, it harmonizes with public policy and will be upheld." *Hanner*, 95 Ariz. at 193, 388 P.2d at 241 (citations omitted); *see also Smith v. Smith*, 71 Ariz. 315, 227 P.2d 214 (1951); *Dunbar v. Dunbar*, 102 Ariz. 352, 354, 429 P.2d 949, 951 (1967) (quoting *Hanner* with approval).

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*Smith* said,

As a general rule where husband and wife have made a separation agreement and thereafter become reconciled and resume cohabitation, the effect is to annul the agreement. However, this rule is generally limited to agreement which provide merely for the parties living separately and for the payment of a stated sum for separate maintenance. As to other provisions, it is said that whether reconciliation operates to annul the agreement depends on the intention of the parties as shown by their acts.

71 Ariz. at 318-19, 227 P.2d at 216 (internal citations and quotations omitted).

Here, the Court will treat the parties' Stipulated Agreement as a Reconciliation Agreement. By its terms, the Stipulated Agreement says that it has the effect of treating the August 14, 2015 Consent Decree of Legal Separation as a nullity. The Stipulated Agreement also makes the accompanying property settlement agreement unenforceable. As such, with this Order, the parties' status as legally separated will end, and the parties' property is returned to the status that it had before the Court signed the Consent Decree.

With this Order, the Court does not determine whether any particular property is community property or sole and separate property. The Court also does not determine whether any particular debt is a sole and separate obligation of one of the parties alone or a community obligation. Instead, this Order merely makes clear that the determination of the status, if ever needed, will depend on the facts and not on the property settlement agreement.

In addition, this Order is not intended and will not affect the rights of third parties with regard to any obligations or property interests that accrued during the legal separation, which would be from August 14, 2015 to the date that this Order is filed.

**IT IS ORDERED** as follows, effective on the filing of this Order, based on the above understandings and limitations, and good cause appearing:

- The parties' Stipulated Agreement filed on May 17, 2016 is adopted as a formal order of the Court.
- The parties' status as legally separated is ended and the parties' marital community is re-established.

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- No party may claim the status of legally separated.
- The parties' property settlement agreement, which was incorporated but not merged into the August 14, 2015 Consent Decree of Legal Separation, is not enforceable by either party.
- This Order shall have no impact on any third-party rights with regard to obligations or property rights created or otherwise incurred by the parties, either jointly or separately, from August 14, 2015 to the date this Order is filed.
- All child support obligations are vacated as of June 1, 2016.
- All spousal support obligations are vacated as of June 1, 2016.

**IT IS FURTHER ORDERED** stopping any Income Withholding Order with the same case number as above. The employer or other payor shall stop withholding monies pursuant to the Income Withholding Order effective June 1, 2016.

**IT IS FURTHER ORDERED** directing the Support Payment Clearinghouse to release any monies currently in its possession and future monies received to obligor.

**IT IS FURTHER ORDERED** approving the parties' Post-Nuptial Agreement signed on May 16, 2016, filed May 17, 2016 as Exhibit 1 to the Notice of Reconciliation.

**IT IS FURTHER ORDERED** denying any affirmative relief sought before the date of this Order that is not expressly granted above.

**IT IS FURTHER ORDERED** signing this Minute Entry as a formal written order of the Court pursuant to Rule 81, *Arizona Rules of Family Law Procedure*.

/s/ Geoffrey Fish

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Honorable Geoffrey Fish  
Maricopa County Superior Court Judge

All parties representing themselves must keep the Court updated with address changes. A form may be downloaded at: <http://www.superiorcourt.maricopa.gov/SuperiorCourt/Self-ServiceCenter>.